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IN THE

Supreme Court of the United States

OCTOBER TERM 1944

No. 702

ALLEN BRADLEY COMPANY, et al.,

Petitioners,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.,

Respondents.

BRIEF OF RESPONDENTS

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The petitioners, hereinafter referred to as the "plaintiffs", are a group of manufacturers of electrical equipment. The respondents, variously referred to herein as the "defendants", the "Union," or the "Local Union", are a labor union, known as Local Union No. 3 of the International Brotherhood of Electrical Workers, and certain of its officials.

The action was brought in 1935 by the plaintiffs in the District Court for the Southern District of New York for a declaratory judgment, decreeing that the activities of the defendants violated the Federal Anti-Trust Laws, and asked for an injunction. The issues were, by stipulation, first tried before a Special Master who reported in favor of the plaintiffs. His report was affirmed by the District Court in findings of fact and conclusions of law. The District Court awarded injunctive relief and a declaratory judgment.

The defendants appealed to the Circuit Court of Appeals for the Second Circuit on the pleadings, findings and judgment. The appellate court reversed and dismissed the action, Swan, J., dissenting, in part (145 Fed. (2d) 215; Rec. pp. 305-329).

Upon application of the plaintiffs this Court has granted certiorari.

Complaint and Amended Bill of Complaint

The original complaint was filed December 9, 1935 (Rec. p. 1). On March 31, 1937, the plaintiffs filed an amended complaint (Rec. p. 2). Both complaints are printed in the record (pp. 5-20, 30-60). The importance of the original complaint lies in the fact, as noted by the Circuit Court of Appeals (Op. p. 313) that it confirms that plaintiffs have shifted their factual position "because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation."

The theory of the plaintiffs has at all times been that the defendant Union violated the law by its conduct in relation to certain non-labor groups. In the original complaint it is charged that the Union coerced these groups into taking the action complained of. No claim of conspiracy between the labor and non-labor groups is, however, asserted. In the amended complaint it is charged that the two groups entered into contracts, which violated the anti-trust laws, as a result of the defendants' coercive pressure. Continuing this progressive shift in emphasis, plaintiffs in the findings, which were filed in 1942, "make much more of the conspiracy, or conspiracies; and several conclusory findings allege an intent to give the local manufacturers and contractors power to control the market and the market price" (C. C. A., Op. p. 314).

Let us turn now to a consideration of the major elements of the amended complaint. It is alleged that the plaintiffs are corporations manufacturing electrical equipment, which

is sold in interstate commerce, and for which there was a profitable market among owners of buildings, contractors and other users until interfered with by the defendants and their associates (pars. 2-16, pp. 31-38). The defendant is a labor union with a membership of many thousands of journeymen electricians and electrical workers in the City of New York and its vicinity, referred to as the Metropolitan Area. The Union claimed jurisdiction over all electrical wiring work and installation of electrical equipment in said area (par. 17, p. 38). The individual defendants are officers of the Union (par. 19, p. 39).

In the Metropolitan Area numerous contractors employing electricians, such as comprise the membership of the Union, are engaged in the installation of equipment of the type manufactured by the plaintiffs (par. 22, p. 40). Most of these contractors have closed shop agreements with the Union under which they are required to stipulate in their contracts with owners, builders, etc., that the contractors must supply the equipment which is to be installed (par. 23, pp. 40-41). Many of the contractors are grouped in associations, which worked under similar agreements with the Union (pars. 24-26, pp. 42-43).

The coercive means employed by the Union in compelling acceptance of these restrictions by the contractors were the threat of sympathetic strikes by various crafts with which the Union had working arrangements, so that no architect, owner, etc., dared employ a non-conforming contractor, also the forbidding of members of the Union to work for a contractor not operating under the agreement, the picketing and boycotting of buildings or retail establishments, hotels, etc., if they employed electrical contractors who were not in agreement with the Union or who employed electricians not members of the Union (par. 28, pp. 44-46).

Contractors who were members of the associations and other contractors working under agreements with the Union were parties to another agreement with the Union provid-

ing for observance of a Code of Fair Competition requiring all bids for contracts in excess of $1,000 to be filed with an administrative agency of the Code, thereby affording the Union a ready means of obtaining information as to the electrical contracts and bids governing work in the Metropolitan Area. This source of information was utilized by the Union in connection with the enforcement of the boycott further described in the complaint (par. 29, p. 47).

Approximately fifteen manufacturers producing electrical equipment within the Metropolitan Area entered into an agreement with the Local Union for the exclusive employment of its members upon the understanding that the Union would protect these manufacturers from competition on the part of other manufacturers of equipment outside of the City of New York, such as the plaintiffs produced, with resultant artificial increase of sales at high prices (par. 30, pp. 47, 48).

The defendants and other persons are engaged in an unlawful combination and conspiracy in violation of the Sherman Act, etc., by closing the market to electrical equipment built outside the City of New York by workers other than members of the International Brotherhood, thus securing a practical monopoly of the market for equipment manufactured by the members of the Local Union in the Metropolitan Area. The conspiracy has drawn into its ranks numerous electrical contractors and manufacturers within such area. Part of the program of the conspiracy is to restrain and destroy trade in electrical equipment of plaintiffs between their places of business outside the City of New York and the Metropolitan Area, because the equipment is not made exclusively by members of the Local Union within the area and because its sale would conflict with the monopolistic purpose of the defendants to secure a market for equipment bearing the label of the Local Union (par. 31, pp. 48-49).

Paragraphs 32 and 33 (pp. 49-55) recite various acts allegedly done by the defendants in furtherance of the conspiracy. These allegations are largely repetitious of what had already been alleged at an earlier point in the complaint.

None of the members of the Local Union have ever been employees of the plaintiffs in their factories and this suit is not between employers and employees arising out of differences with respect to terms or conditions of employment (par. 34, p. 55).

The relief prayed for is as follows (pp. 56-60):

A. A declaratory judgment holding that the conspiracy is in violation of the Sherman Anti-Trust Law, as amended and supplemented.

B. That an injunction issue restraining the defendants from inducing or seeking to induce any persons to refrain from purchasing electrical equipment from the plaintiffs or diverting business from plaintiffs upon the ground that the assembling and wiring of the equipment is performed in factories of the plaintiffs by workers not members of the International Brotherhood, or preventing plaintiffs from securing orders upon the ground that the equipment is assembled and wired in such factories, or requiring owners, contractors, etc., to enter into agreements not to buy from plaintiffs or inducing persons to refuse to handle any of the plaintiffs' products while at the same time they are permitted to handle or install products of a competing manufacturer, or adopting rules forbidding members of the Local Union to handle, install, etc., such products, or inducing any persons not to handle or install the same unless, after being wired and assembled by plaintiffs in their respective factories, the equipment is disassembled and unwired and shipped into the Metropolitan Area in an unfinished state.

The original complaint, as the Circuit Court of Appeals notes (Op. pp. 313, 314), stressed the "union power which has forced the contractors to employ only union labor and 'through their [defendants'] said control over said electrical contractors' has coerced the latter not to purchase electrical equipment wired or assembled wholly or partly by non-union men outside the Metropolitan Area."

Paragraph 10 of the original complaint (pp. 13-15), which detailed the acts of the Union in exercising such coercion on the contractors, is wholly barren of any charge that the coercion was exerted for the purpose of benefiting local manufacturers to the disadvantage of the plaintiffs, which charge forms so prominent a part of plaintiffs' amended complaint (pars. 30-32, pp. 47-54). Such local manufacturers, in fact, are not even mentioned in the original complaint.

The prayer for injunctive relief in both the original and amended complaints is substantially identical. The most significant portion in such prayer is subdivision (f) (pp. 19, 59), reading:

> "(f) Inducing, ordering, directing or requiring any person or persons to refuse to handle, connect, install or work upon any of the electrical equipment mentioned in subdivision (a) of the foregoing, produced by the manufacturing plaintiffs and the members of National Electrical Manufacturers Association aforesaid, or any of them, while said person or persons are permitted to handle, connect, install or work upon similar products made, wired, assembled or sold *by any competing manufacturer or manufacturers within the Metropolitan Area aforesaid*" (p. 59).

In the original complaint there is no suggestion that the local manufacturers are the partners of the Union in a conspiracy to monopolize for such manufacturers the production of electrical equipment and the increase of prices therefor, whereas in the amended complaint such charge becomes the foundation stone in the structure of illegality.

The prayer for relief outlined above, however, continues the same. The Court is asked to forbid the Union to tell its members not to install plaintiffs' products so long as these members are authorized to install the competing products of local manufacturers.

It is clear that the conspiracy with the manufacturers, which is not pleaded in the original complaint, is only an afterthought, and that plaintiffs' complaint is not against a monopolistic conspiracy but against the preference displayed by the Union toward manufacturers employing members of the Union as against manufacturers not employing its members.

Answer to the Amended Complaint
(Rec. pp. 61-75)

The answer denies, generally, the allegations of unlawful combination and conspiracy and, specifically, the jurisdiction of the Court, and sets up, as separate defenses, pleas of adequate remedy at law, want of jurisdiction over the subject matter, and the applicability of the Norris-LaGuardia Act because of the existence of a labor dispute.

Decision of the Special Master
(Rec. pp. 135-154)

A stipulation dispensing with the printing of the Special Master's decision recites that the findings of fact and conclusions of law incorporated in the final decree and declaratory judgment entered by the District Court are the same as those made by the Special Master, with the exception of certain modifications and three new findings of the District Judge. These are neither substantial nor material.

Statement of Facts

Inasmuch as the testimony of the hearings forms no part of the record on appeal, the facts reviewed by the Circuit Court of Appeals are to be found in the opinion of the Special Master (Rec. pp. 80-134), and the findings of fact and conclusions of law incorporated in the final decree and declaratory judgment (Rec. pp. 173-295).

The opinion of the Circuit Court comments pointedly:

> "The industry of counsel and of the special master is to be commended; but we are constrained to say that the very verbosity and superfluity of the findings have not aided decision as much as doubtless had been expected" (Op. p. 312).

The plaintiffs by an eclectic process that places emphasis on findings of fact and conclusions of law not closely relevant to the narrow issues here involved have succeeded in condensing these voluminous findings within the compass of half a dozen pages. In so doing, however, they have sought to create the impression that the defendants were not, in doing what they did, engaged in the customary and recognized activities permitted to a labor union but, rather, were associating themselves as commercial partners of the employers of the Union's members in monopolistic trade practices and the artificial enhancement of prices for the private benefit of the employers.

It is not the writer's intention to fall into the same error of distorting the effect of the findings as a *whole* by stressing specific findings taken out of their context. On the other hand, to attempt to summarize all the findings would only serve to obscure the specific issues in dispute.

The Circuit Court of Appeals with the voluminous findings of fact before it, and aided by the report of the Special Master, likewise comprising part of the record, has taken a view of the facts at variance with that presented by the plaintiffs in their brief and confirming the

contention of the defendants that the Union was acting in its own self-interest and not in association with the employers in the interest of the latter. The Circuit Court of Appeals wrote (Op. p. 315):

> "Nevertheless, on any judicious view of the case, we do not believe the motive or intent of defendants can be at all in doubt; and we are left only to appraise its legal validity and effect. That the union and its officers were acting wantonly, corruptly, or even benevolently for the mere benefit of their co-partners, and were not at all times acting for what they conceived to be the self-interest of the union and its members, is nowhere asserted, but is negatived by the *general import of all the findings and explicitly by several,* of which Finding 361 is typical. That finding, after stating that the defendants and those acting in concert with them were 'in no way concerned with the working conditions, rates of wages or union affiliations of the employees in plaintiffs' factories outside the Metropolitan Area,' continues: 'The ban on the plaintiffs' products is and has been imposed and maintained by the aforesaid combination of the defendants, the local union contractors and the local union manufacturers, solely because the plaintiffs do not, or because of their geographical location outside the Metropolitan Area cannot, employ members of Local No. 3 in their factories outside the Metropolitan Area.' *In other words it was a make-work campaign for the benefit of union members.*" (Emphasis supplied.)

The groups involved in or affected by the activities of the Union, as recited in the findings, are the following:

(1) *The Defendants* (Findings 86-139, pp. 195-208). The Union has a large membership. It is an effective factor in compelling persons within the City of New York, who want to use or install electrical equipment, to give employment to its members. Those who either refuse to give such employment or are unable to do so experience difficulty in marketing their products in the Metropolitan Area. It is affiliated with the International Brotherhood of Electrical Workers, American Federation of Labor,

which has a membership of some 300,000. At the time of the trial the Local Union's own membership, comprised largely of journeymen electricians and workers fabricating and installing electrical equipment, etc., similar to that which the plaintiffs produced, numbered 15,000.

The Local Union asserted jurisdiction in the Metropolitan Area. During the years of the depression it had in an effort to obtain work for its members increased its membership and extended its organizational activities, always, however, remaining within the general field of production and installation of electrical equipment.

Prior to 1928 the Local Union's membership had consisted of journeymen and helpers, who were engaged in fabricating and installing electrical equipment in buildings. By a merger in that year with another local the defendant Union absorbed workers engaged in wiring and assembling lighting fixtures.

In 1934 shop men engaged in manufacturing switchboards and other equipment were taken in, and in 1935 the Union's charter was amended so that the Union might receive into its membership workers primarily engaged in the manufacture of electrical equipment.

The membership of the Local Union was divided into various classifications, embracing different types of employees engaged in the electrical industry.

(2) *The Plaintiffs* (Findings 1-85, pp. 175-195). The plaintiffs are manufacturers of electrical equipment, which they are interested in marketing in the Metropolitan Area for installation and use in buildings located therein. Plaintiffs' factories are, for the most part, situated outside of the Metropolitan Area to which the territorial jurisdiction of the Union is restricted.

The labor record of the plaintiffs, viewed through the eyes of the Union, was not good. Most of the plaintiffs are non-union shops. A number of them have progressed to the point of negotiating with a bargaining representative designated by the National Labor Relations Board

after an election or other proceeding, and some, at the time of the trial, were still awaiting the outcome of such elections. A small number of them have agreements with local unions other than the defendant Union. These, for the most part, are C.I.O. or "independent" unions.

In one instance the defendant Union had been designated collective bargaining agent for a plaintiff in the City of New York, but as of the date of the trial no agreement had as yet been reached (Findings 57-59, pp. 187-188).

In another instance, when the defendant Local Union had tried to obtain a collective bargaining agreement for a plant in Newark, the plaintiff in question had refused to negotiate (Findings 81, 82, p. 193).

In still another instance, after the defendant Union had enrolled many employees in a plant of one of the plaintiffs located in Bronx, New York City, that plaintiff had declined to negotiate with or to recognize it as bargaining agent, and shortly thereafter had moved part of its plant out of New York and discharged many of the employees who were members of the defendant Local Union (Findings 23, 24, p. 180).

At the time of the trial none of the plaintiffs were operating under an agreement with the defendant Local Union (Finding 85, p. 195).

We, thus, have a group of plaintiffs who manufacture either in non-union shops or under bargaining agreements with unions not affiliated with the International Brotherhood or with the defendant Local Union No. 3 itself. They produce various types of electrical equipment, which they ship into New York City, there to be sold, used and installed. The defendant Local Union No. 3 says, in effect, to the plaintiffs: "You can produce this equipment wherever you choose. You can ship the finished product into the City of New York and there offer it for sale. You can install it in buildings, if you wish and are able to. We, however, will not do the installing and we will picket any place where installation is done by persons other than our members."

Further light on the employment conditions with which the Union was confronted, particularly in the years of depression, and to improve which the Union has ever since fought, is cast by the opinion of the Special Master, who wrote (Rec. p. 100):

> "During the period between the financial crash of 1929, and 1934, unemployment was so general that only about one-fourth of the members were employed."

And (Rec. p. 101):

> *"Reaction on Labor Conditions in the Defendant Union Resulting from Improved Techniques in the Making of Electrical Equipment.*
>
> "The developments in electrical equipment which have been reached in the improvement of electrical apparatus for modern uses are responsible for the controversy involved in this case."

Following the foregoing sentence the Special Master stresses the history of such improved techniques and the consequent encroachment on the job opportunities of electricians, members of the defendant Union, engaged in the installation of such equipment. Originally the apparatus to be installed was comparatively simple and the journeymen electricians "did practically all of the fabrication on the job". (Rec. p. 101).

But, as the equipment in the development of the modern building became more complicated, the business of fabricating switchboards, accordingly, became a factory job (Rec. p. 101). In 1932 and 1933 "the building industry in New York was confronted by a falling off of business to practically nothing. As the defendant Union was almost entirely dependent upon installation in new construction work, the journeyman worker was confronted by conditions of acute distress" (Rec. pp. 103-104).

The Union officials had observed that as a result of a boycott of prefabricated lighting fixtures, a number of members of the Union succeeded in obtaining employment

in wiring such fixtures in *shops* set up for the purpose in New York City (Rec. p. 104). From this beginning the Union proceeded to a unionization of local switchboard factories as a step to "preserve the work opportunities of the local union" (Rec. p. 105).

A number of findings of fact recount the steps taken by the Union to counteract such encroachment upon the work opportunities afforded its members by prefabrication of electrical equipment in factories established beyond the Metropolitan Area. A major step was the unionization of those factories which were within its reach, namely, those in the City of New York and vicinity. Such unionization provided additional job opportunities for members and, at the same time, enabled the Union to regulate the jurisdictional question of what work was to be done in the factories and what at the place of installation. To implement its policy the Union instructed the workers engaged in installation to see to it that they did not install any equipment which failed to carry the Union label as an indication that other members of the Union had been employed in the manufacture of such equipment (Op. pp. 308-311; Findings 231-234, pp. 240-244; Finding 246, p. 245; Findings 252-256, pp. 246-248; Findings 258, 259, p. 249; Findings 267-283, pp. 252-257; Findings 285-291, pp. 257-260; Findings 294, 295, 297, 299, pp. 261-262; Findings 308-312, pp. 265-266; Findings 315-320, pp. 267-268; Finding 321, p. 268; Findings 324-326, pp. 269-270; Finding 329, pp. 270, 271; Findings 339, 340, p. 274; Finding 342, p. 275).

(3) *Groups of Employers Within the Metropolitan Area.* The Union was unable to enter into labor relations with the plaintiffs because they were outside the territorial jurisdiction of the Union. Employers within such area fell into two classifications: (1) electrical contractors, and (2) manufacturers of electrical equipment.

Electrical contractors (Findings 140-155-A, pp. 208-213) furnish and install electrical equipment in the Metropoli-

tan Area and require the services of skilled electricians, such as form the membership of the defendant Local Union. More than 90% of the contractors were finally compelled or persuaded by the defendant local to enter into closed shop agreements with the Union. Under such agreements the contractors were required to buy the electrical equipment which was to be installed on their jobs. This was to enable the Union to insure through the affixing of union labels on such equipment, the observance of its rule that only labeled equipment produced by union members would be installed by union members (Findings 260-262, pp. 249-250).

Originally half a dozen concerns were engaged in the manufacture on a small scale in the Metropolitan Area of certain types of electrical equipment. The Union began its campaign of unionization in 1933 and, overcoming strong employer resistance, succeeded by 1934 in procuring its first agreement providing for substantial wage increases, a closed shop and the affixing of union labels to the products manufactured (Findings 170-172, pp. 218-220).

Thereafter, during the years 1935, 1936, 1937 and 1938,* the Union, continuing its intensive organizational activities among the Metropolitan manufacturers and through recourse to the traditional methods of labor, namely, strikes, picketing, circularization, enrollment of members from among the employees of shops theretofore conducted as non-union, etc., was able to obtain similar agreements from additional manufacturers in the electrical field. In none of these cases did the local manufacturers, who entered into these agreements, voluntarily approach the Union with offers to enter into such agreements. The agreements were, in fact, as characterized by the Circuit Court of Appeals, merely "armistices" in a protracted conflict (Op. p. 319;

* It is interesting to note that the Union's organizational campaign was being carried on in the face of employer opposition for fully three years after the commencement of this action and for about one year during which the hearings were in progress (Rec. pp. 2-3).

Finding 173, p. 220; Finding 204, p. 231; Findings 233-235, pp. 241, 242; Finding 256, p. 248; Findings 308-310, pp. 265, 266; Findings 315-317, p. 267; Findings 324, 325, p. 269).

To implement these agreements the Union directed its members to install only such equipment as bore the union label and penalized its members for infractions of this rule. This pressure was sufficient to induce local contractors to buy only such products as were thus labeled, even though the price was higher than that listed for unlabeled articles. The plaintiffs, accordingly, lost business they would otherwise have had in the Metropolitan Area, and the local manufacturers, in turn, benefited by the higher prices obtained (Findings 168-187, pp. 217-225).

For a comparatively brief period the Union "to obtain information as to electrical contracts and bids covering work in the Metropolitan Area in connection with the enforcement" by it of its instructions to its members to install only the equipment so labeled availed itself of the existence of a Code of Fair Competition to which certain of the associations of electrical contractors, as well as individual contractors working under agreements with the local, were parties (Amended Bill of Complaint, par. 29, p. 47).

Concerning the Code, the Circuit Court of Appeals writes, in part (p. 310):

> "This code was a part of the union contract with several contractor associations in 1935, but it was disapproved by the International President of the I. B. E. W. and the record is not entirely clear whether thereafter it remained a part of the union contract until the contractors themselves gave it up in 1939. At any rate, it is found that the union filed no complaints under the code and did not share in the fines or itself take any action against a contractor or cause its members to refuse to stay in the employ of disciplined contractors."

The Circuit Court of Appeals further appends a footnote to the foregoing, reading (p. 310):

> "The master's opinion states only that there was a sharp conflict in the evidence; the findings, however, are general and conclusory to the effect that the union was bound by the code."

The discontinuance of the Code by the contractors in 1939, fully two years before the Special Master's opinion was handed down (p. 134) and four years before the entry of the decree herein in 1943 (pp. 294-295), and the exoneration of the Union from complicity in irregularities charged to a few of the contractors (Finding 167, p. 217), demonstrate the irrelevancy of the circumstance to the controversy here in issue, namely, the fundamental right of members of the Union to cease work if asked to install electrical equipment other than such as had been manufactured by members of the Union.

The economic pressure exerted by the Local Union was traditional in form. Over a period of years, as noted above, by strikes, picketing and refusal to have its members install electrical equipment not bearing the label indicative of the fact that others of its members had fabricated such equipment, the Local Union was able to wrest from the contractors and manufacturers in this area a series of agreements for closed shops, both as to the fabrication and installation of such equipment. Wages of its members were increased, hours reduced and work opportunities multiplied (Op. pp. 308-311; Finding 89, p. 196; Findings 93-95, pp. 197, 198; Findings 118-124, pp. 203-205; Findings 127-131, pp. 206-207; Findings 168-177, pp. 217-221; Finding 186, pp. 224, 225; Finding 217, pp. 235-236; Finding 235, pp. 241-242; Findings 238, 239, pp. 243-244; Finding 256, p. 248).

That was the Union's original purpose; that was the goal achieved.

The buying public, consisting of owners, builders, architects, the municipality and its agencies, and public utilities, requiring the services of the contractors, were in great measure constrained to engage them on terms that did not conflict with the contractors' agreements with the Union. The increased cost of production and installation resulting from higher wages paid for shorter hours by the manufacturers of the equipment and by the contractors who installed it were passed on to the public. But this is a condition which is a not unusual consequence upon the consummation of closed shop and union labeling agreements.

In the meantime the plaintiffs, who, with certain exceptions, could not get the members of the defendant Union to install their electrical equipment because it had not been produced by other members of their Union, found it difficult to sell such equipment in the Metropolitan Area. The public would not buy equipment which the Union electricians refused to install. This is the entire basis of plaintiffs' complaint.

The Union's purpose in engaging in the activities complained of is clearly set forth in a number of findings. Such purpose was the obtaining of higher wages per hour and of shorter hours of employment (Finding 55, p. 248) and *"to make, obtain, secure, maintain, preserve and defend work opportunities for its members, all for the protection of their self-interest"* (Finding 256, p. 248; see also Findings 365, 366, p. 284).

Conclusions of Law
(1-26, pp. 286-290)

The boycott of electrical equipment and materials not manufactured by members of the defendant Union for use in New York City, and the requirement that the wiring and assembling of equipment be done by members of the Local Union, were found not to be legitimate labor activi-

ties, and hence not exempt under the Sherman Act. No labor dispute as defined in the Norris-LaGuardia Act existed and its provisions were, therefore, inapplicable. The activities of the Local Union in calling strikes on electrical operations conducted by the various New York City departments for the purpose of obtaining employment for defendants' construction members were unreasonable and unlawful.

Plaintiffs were, accordingly, held to be entitled to a declaratory judgment that the combination and conspiracy and the acts done and being done in furtherance thereof, as set forth in the findings of fact, were unlawful and contrary to the Sherman Anti-Trust Act, etc.

Declaratory Judgment
(par. 5, p. 290)

The Court declared the combination and conspiracy and the acts done and being done, etc., as unlawful and contrary to the Sherman Act, as amended and supplemented.

Injunctive Relief Decreed
(par. 6, pp. 291-294)

Subdivisions (a) to (h) of the relief awarded follow closely the prayer for relief in the complaint and amended complaint. Items (i) and (j) provide for additional relief, not specifically sought in such complaints. The relief granted is, generally, as follows: Against

(a) and (b) Inducing persons not to buy from the plaintiffs or not to perform any contracts to buy from them;

(c) Diverting business from the plaintiffs on the ground that the wiring of the equipment involved was performed in plaintiffs' factories; or upon the same ground

(d) Preventing plaintiffs from securing orders; or

(e) Requiring owners or contractors to agree not to buy such equipment from the plaintiffs; or

(f) Inducing persons to refuse to handle plaintiffs' products; or

(g) Adopting rules forbidding such persons to handle same; or against

(h) Inducing such persons to refuse to handle the products unless disassembled or unwired and reassembled by members of the local; or

(i) Making agreements with contractors and others restraining purchases from the plaintiffs on the ground that the products were not worked upon by members of the defendant local; or

(j) On similar grounds taking any action to prevent or burden the purchase, installation, assembling, etc., of electrical equipment produced by the plaintiffs.

Concerning the relief so awarded, the Circuit Court of Appeals comments (Op. p. 315):

"The broad scope of the injunction is such as to reach peaceful attempts by the defendants—among whom are included the individual officers of the union—to induce any person (thus even a union member) not to deal with plaintiffs, while it is most doubtful if the unnamed 'confederates' are reached at all. Cf. Federal Rule 65 (d), supra."

POINT I

The injunction issued and declaratory judgment awarded to the plaintiffs by the District Court erroneously barred the defendants from engaging in traditional labor union activities which within the definition of the Norris-LaGuardia Act are lawful activities.

A. The activities which were erroneously enjoined or declared illegal.

The writ of injunction (pp. 296-300) enumerated in ten sweeping subdivisions those things which the defendants and all persons acting in aid or in conjunction with them were forever forbidden to do. Stripped of repetition and fine distinctions, the injunction forbade the Local Union to tell its members not to handle and install electrical equipment not manufactured by its members in shops having closed shop agreements with the local.

Whatever the law may once have been and whatever injunctive or other relief the plaintiffs might formerly have been entitled to upon the basis of the facts established, one thing is clear and that is that an injunction of such scope and intent directed against a labor union forbade it to do that which the law enacted by Congress and the most recent pronouncements of the Supreme Court of the United States definitely hold a labor union may do.

The Circuit Court of Appeals expresses this view in its opinion in the following language (p. 321):

> "Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, Section 20, viz., as restraining Local 3 and its officers 'from terminating any relation of employment, or from ceasing to perform any work or labor * * * or from ceasing to patronize * * * any party to such dispute, or from recommending, advising, or persuading others by

peaceful and lawful means so to do.' 29 U. S. C. A., Section 52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendants set forth in the findings."

It is manifest that a Court, which renders a judgment declaring certain acts to be illegal, need grant the plaintiff no injunctive relief to apprise the defendant that its continuance of the acts thus declared illicit is at the peril of the defendant. Accordingly, though the Norris-LaGuardia Act and legal precedent may forbid the issuance of an injunction and the Court itself may be disinclined to grant one, the Court by a declaration that certain acts are illegal achieves the same result as through the issuance of a sweeping injunction. This case illustrates the actual operation of the procedure.

The all-embracing 23rd conclusion of law read:

"23. Plaintiffs are entitled to a declaratory judgment declaring that the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the * * * the Sherman Anti-Trust Law, as amended and supplemented."

There are 374 findings of fact based on 23,000 pages of testimony, and the defendants dared not move in any direction lest they should overstep that which was thus held to be illegal. Who could guarantee that at some future time no Court would rule that any single act embodied in these 374 findings was an act "done and being done in furtherance" of the combination and conspiracy so adjudged illegal? Let us select some of these findings at random by way of illustration:

Finding "173" (p. 220), attempts of the local to obtain improved working conditions through strikes against manufacturers.

Finding "197" (p. 228), the requirement that electrical contractors doing work in the Metropolitan Area employ members of Local No. 3 exclusively (a closed shop).

Finding "199" (p. 229), the picketing with "unfair signs" of places of business of electrical contractors not working under closed shop agreements with the local.

Finding "209" (p. 233), the calling of strikes on New York City projects involving electrical construction work to prevent employment of electricians not belonging to the local, in order to obtain and enlarge the work opportunities of the construction workers of the union.

Finding "213" (p. 234), the "wresting" of work from American Federation of Labor union trades by jurisdictional strikes interfering with construction operations.

We need not labor the point by further example, but we do not yield to the suggestion that the declaration implied no illegality in these practices. In the first place, the declaratory judgment was unlimited in application, and what is worse from the Union's point of view, there was imposed upon the Union the perilous task of determining when repetition of one of these normally legitimate labor activities would be held by virtue of the judgment to come under the ban and to constitute a basis for treble damage actions or other relief. Picketing by the defendant of a manufacturer in the Metropolitan Area in an attempt to obtain a closed shop agreement from such manufacturer could be held violative of the injunction as thus amplified and extended by the declaration of illegality.

The Circuit Court of Appeals commented upon the all-inclusive scope of the injunction in the following language (Op. p. 313):

"Here there is an added difficulty in the incorporation of all the findings in the judgment and their in-

clusion by express statement in the declaration of invalidity and by implication in the prohibition of the injunction. * * * Labor union officers and members are entitled to a more direct and succinct statement of the illegalities of which they are held guilty and which they must cease under penalties of fine and imprisonment."

B. The object of the defendant Union in doing the acts erroneously enjoined or declared illegal by the District Court was to obtain for its members additional job opportunities and to protect those job opportunities thus secured or already possessed.

The plaintiffs alleged and the Special Master agreed that there was a fundamental weakness in the defendants' assertion that its acts were done in the course of a labor controversy. The "34th" paragraph of the complaint (Rec. p. 55) states plaintiffs' position, which was adopted by the Special Master whose opinion reads (Rec. p. 93):

> "The objective of the combination and the conspiracy was not to carry on the unionization, or any change or improvement in working conditions in the factories of the plaintiffs outside of New York State. In the case at bar, business manager Van Arsdale and his associates frankly stated that they were in no way concerned with the working conditions, the rate of wages or the union affiliations of the plaintiffs' factories. It was immaterial to them whether members of other locals of their own union were employed by the plaintiffs."

And further (Rec. p. 94):

> "No matter what any one of the plaintiffs might have done at any one of its factories, with regard to wages, hours or other terms or conditions of employment, it could not have avoided the absolute exclusion by the local union, in conjunction with the contractors and manufacturers, barring its products of the proscribed types from the New York City market and stopping that activity of its interstate commerce."

The defendant Union fully agrees that it was in no way concerned with improving the conditions of the workers in the factories of the plaintiffs.

The District Judge, in his memorandum opinion, based his affirmance of the Special Master's determination upon a different ground, discussed herein, *infra* pages 40-41, but in the Court's findings numbered "367", "368" and "369" (pp. 284-285) it adopted virtually unchanged, the corresponding findings of the Special Master, to the effect that there was no conflict between the Union and the contractors or manufacturers having agreements with it concerning the terms or conditions of employment of *plaintiffs'* employees outside of the City of New York, and further that there was no desire on the part of the defendant Union to bring about any modification of working conditions maintained by plaintiffs at their said plants outside the Metropolitan Area.

Plaintiffs' view of the law, therefore, is that for a labor controversy to exist it must appear that the defendant Local is seeking to alter the working conditions of the *plaintiffs'* employees. That the Union is seeking to benefit the working conditions only of its *own members* is, it is argued, not the basis for a labor controversy.

This position is clearly erroneous. So far as the defendants are concerned the plaintiffs and their employees are mere bystanders to the labor dispute, which here existed. The dispute was not between the defendant Union and the plaintiffs or the plaintiffs' employees, who are outside defendant's territorial jurisdiction. It was, rather, between the defendant Union and those manufacturers and contractors who were within such jurisdiction. With these latter, as appears beyond all controversy from the findings of fact herein made, an intensive campaign of organization on the part of the defendant Union was necessary before that labor dispute was temporarily resolved in closed shop agreements (see *supra*, pp. 14-15). In the course of *that* dispute the defendant Union successfully maintained the posi-

tion that it would not permit any of its members to work on electrical equipment or to install such equipment unless a Local 3 label established that it had been manufactured by the hands of its members.

This prospect is a bleak one so far as the plaintiffs are concerned. It is bleak, however, not because it is illegal, but because the defendant Union is strong and its membership is disciplined. If the defendant Union were weak or its members did not realize wherein their economic advantage lay, the plaintiffs would not be so seriously affected within the Metropolitan Area by these legitimate activities of the Union.

Lest the position of the defendant Union as thus bluntly stated—and sanctioned by both statute and judicial precedent—may seem too uncompromising, it should not be overlooked that the Metropolitan Area is a great and populous territory holding almost 10 percent of the population of the United States, and that factories have been established outside that area or removed from within it with a view, as is commonly known, to avoiding the pressure of the Union within the area for improved working conditions. Once they have been thus removed, there is little that the Local Union is able to do outside its jurisdiction to ameliorate the situation. The labor record of the plaintiffs, from the viewpoint of the defendant Union, as illustrated by the findings of fact, is not one over which we might expect the defendant Union to become enthusiastic (pp. 10-11, *supra*).

C. The Norris-LaGuardia Act and recent Supreme Court decisions interpreting it constitute legal justification for defendants' acts.

Labor unions are admittedly combinations whose activities are in restraint of trade. It is a historical fact that for a time all their activities were considered to be those of *unlawful* combinations. Gradually, they gained for themselves immunity from charges of illegality as to an increasingly broad field of activities until today there is a

well-defined and still growing area within which these combinations, though still acting in restraint of trade, are held to be *lawful* combinations. In this connection the Circuit Court of Appeals wrote as follows (Op. 315, 316):

> "For half a century and against strong popular, political, and legislative pressure, the courts struggled to resolve the anomaly of applying a statute forbidding combinations in restraint of trade to a social organism which must depend on united effort for its existence and upon at least certain restraints of trade as a reason for its being. Finally, at long length the Supreme Court boldly announced what must be taken as an abandonment of the attempt. The case which most significantly marks this change is *United States* v. *Hutcheson*, 312 U. S. 219, 231, 236, where the majority of the Court through Mr. Justice Frankfurter made clear that the Sherman, Clayton and Norris-LaGuardia Acts must be read together as 'interlacing statutes' presenting 'a harmonizing text of outlawry of labor conduct,' and that 'the Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act.'"

Illustrative of this change of position are the following cases of recent adjudication:

In the case of *Milk Wagon Drivers' Union Local No. 753, et al.* v. *Lake Valley Farm Products, Inc., et al.*, 311 U. S. 91, dec. 1940, the Supreme Court said (p. 101):

> "The Norris-LaGuardia Act—considered as a whole and in its various parts—was intended drastically to curtail the equity jurisdiction of federal courts in the field of labor disputes."

And again, at page 102:

> "The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over half a century. Hostility to 'government by injunction' had become the rallying slogan of many and varied groups. Indeed, as early as 1914 Congress had responded to a widespread public

demand that the Sherman Act be amended, and had passed the Clayton Act, itself designed to limit the jurisdiction of federal courts to issue injunctions in cases involving labor disputes."

In *United States* v. *Hutcheson*, 312 U. S. 219, dec. 1941, the Supreme Court said (p. 235):

> "Such legislation must not be read in a spirit of mutilating narrowness. • • •
>
> "The relation of the Norris-LaGuardia Act to the Clayton Act is not that of a tightly drawn amendment to a technically phrased tax provision. The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction. This was authoritatively stated by the House Committee on the Judiciary. 'The purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act, October 15, 1914 (38 Stat. L., 738), which act, by reason of its construction and application by the Federal courts, is ineffectual to accomplish the congressional intent.' The Norris-LaGuardia Act was a disapproval of *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443 and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Association*, 274 U. S. 37, as the authoritative interpretation of Section 20 of the Clayton Act, for Congress now placed its own meaning upon that section."

And at page 236:

> *"There is no profit in discussing those cases under the Clayton Act which were decided before the courts were furnished the light shed by the Norris-LaGuardia Act on the nature of the industrial conflict."* (Emphasis supplied.)

The *Duplex Printing Press* and *Bedford Cut Stone* cases, which were, thus, overruled by the Supreme Court in 1941, constituted the anvil on which many a labor injunction of a bygone day was hammered and shaped under the author-

ity of the Clayton Act. These celebrated cases, one need hardly remark, held that unless a direct employer and employee relationship existed between the parties in controversy the refusal on the part of the workers to handle products made by non-union hands constituted a secondary boycott violative of the Sherman Act.

For the law as it is now construed we turn to *United States* v. *American Federation of Musicians*, 47 Fed. Supp. 304, D. C., N. D. Ill., aff'd per curiam dec. 318 U. S. 741, February, 1943. Such per curiam decision reads, briefly:

> "The judgment is affirmed. Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. 101-115; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Milk Wagon Drivers' Union* v. *Lake Valley Co.*, 311 U. S. 91."

The statute referred to is, of course, The Norris-LaGuardia Act.

The facts in the case are given in the opinion of the District Court from which a direct appeal was taken by the Government to the Supreme Court. The suit was brought by the United States to enjoin defendant Union from engaging in certain activities allegedly in violation of the Sherman Act. On the Government's motion for a temporary injunction and the defendant's motion to dismiss the complaint, the injunction was denied and the complaint dismissed.

The Union had a membership of some 140,000, which comprised virtually all musicians "making music for hire" in the *entire United States*.

The complaint charged that for the purpose of destroying all interstate commerce in phonograph records and electrical transcriptions, monopolizing all performances of musical entertainment, eliminating competition between transcribed music and music produced by live musicians, defendant conspired to (a) prevent manufacture and sale of all phonograph records and electrical transcriptions; (b) eliminate from the market all manufacturers, distribu-

tors, jobbers and retailers of such records; (c) prevent radio stations from broadcasting musical compositions thus recorded; (d) prevent the use of phonograph records and juke boxes located in various establishments; (e) prevent the use of phonograph records in the home; (f) prevent the sale of phonograph records to radio stations by requiring manufacturers to boycott all distributors, jobbers and retailers who sold such records to radio broadcasting stations and juke box operators; (g) eliminate all musical performances for the radio, except by members of the defendant Union; and (h) require radio broadcasting stations to hire unnecessary "stand by" musicians, who were members of the defendant local, by requiring radio networks to boycott stations which refused to meet the demands for hiring "stand by" musicians.

All these things were done by notifying the record manufacturing companies that their licenses for the employment of members of defendant Union in making musical recordings would expire on a date fixed and would not be renewed and that thereafter the members would not make such recordings.

The purpose of the conspiracy, as set forth in the complaint, was:

> "• • • to eliminate from the market the manufacture, sale and use of musical compositions mechanically recorded on phonograph records and electrical transcriptions unless the persons engaged in such business enter into an agreement with the defendant union to hire such useless and unnecessary labor as the defendant union may demand; that a further purpose of said conspiracy is to exclude from the market the competition of anyone who does not exclusively employ members of the defendant union" (47 Fed. Supp. 304, 306).

The intent and effect of the conspiracy were that (p. 306):

> "• • • of unlawfully destroying all manufacture and sale in interstate commerce of phonograph records and electrical transcriptions; of eliminating all

> competition between music produced by mechanical means and music produced by live musicians; of depriving the public of an inexpensive means of entertainment over the air, in restaurants, hotels and dance halls and in the home."

The musicians' union was thus attempting to exclude manufacturers of mechanical music not merely from a local, but from the *national* market. The defendant Union was determined that the manufacturers should go out of business and with them the manufacturers of juke boxes, which utilized their products. Furthermore, in those instances where the radio station broadcast a transcribed record, it was to engage a "stand by" musician (the term defines itself) to stand by doing nothing except to draw his pay because the use of the transcription deprived him of an opportunity to work.

The Union was not interested in the slightest degree in improving the working conditions of the employees of the record manufacturers and of the juke box operators.

In support of the motion to dismiss, the defendants contended that the employer:

> "• • • merely alleges an agreement by members of a labor organization *peacefully to refuse to work for employers in an effort to obtain, extend and preserve employment opportunities* and that, accordingly, the Norris-LaGuardia Act, 29 U. S. C. A., Section 101 et seq. precludes the Court from granting the relief sought and that this is true even though it be assumed that a violation of the Sherman Anti-Trust Act has been alleged" (47 Fed. Supp. 304, 307). (Emphasis supplied.)

The District Court ruled in favor of the Union and said (p. 308):

> "The subject of the dispute is, generally speaking, the question as to whether the members of the union shall be employed to make all the music that is to be made or shall be employed to make only a part of it,

the remainder being made by means of phonograph records and electrical transcriptions and by amateur musicians. The union and its members contend that the members of the union should have the exclusive right to make music while the phonograph record and the electrical transcription manufacturers and broadcasting companies contend for the opportunity to have music made by means of phonograph records and electrical transcriptions and by amateurs.

"* * * The Court is satisfied that the union and its members and the employers of the latter are disputing in respect of a 'condition of employment' and that, accordingly, the dispute involved in this case is a 'labor dispute' within the meaning of the Norris-LaGuardia Act."

The "Hod Carriers'" case, cited as *United States* v. *Carrozzo*, 37 Fed. Supp. 191, aff'd sub nom. *U. S.* v. *International Hod Carriers*, 313 U. S. 539, in a per curiam decision, which cited merely *U. S.* v. *Hutcheson*, 312 U. S. 219, marks a further departure from the secondary boycott rule enunciated in the *Duplex Printing Press* and *Bedford Cut Stone* cases. The appeal came up on a demurrer to an indictment which had been sustained. The indictment charged a *conspiracy* to prevent the selling and delivery of truck mixers in and shipping them into the Chicago area in restraint of trade.

The opinion in the District Court recites the following facts:

The indictment charged that the defendant Hod Carriers Council had forced contractors in the Chicago area using truck mixers (a labor-saving device for making concrete en route to a job site) to employ the same number of men at the job site that they would have employed had the concrete been prepared at that point. *A working agreement to this effect between the union and the contractors was enforced by strikes and threats of strikes.* Building contractors in the Chicago area were prevented from using truck mixers on building projects by threats of strikes. The union refused to approve employment of

its members and ordered them not to work upon any building or paving project where truck mixers were used. Manufacturers of truck mixers and prospective purchasers were warned by the union that truck mixers were not permitted to be sold or used in the Chicago area. In short, there existed a conspiracy to prevent persons,

> "engaged in manufacture of truck mixers in states other than the State of Illinois, from selling and delivering truck mixers in, and shipping the same to the Chicago area, where they would enter into competition with other types of equipment, machines and devices employed in the production of concrete, and where their use would result in the reduction of the cost, and an improvement of the quality of the concrete to consumers" (Opinion of District Court, p. 194).

All this has a familiar ring. If we were to substitute "New York City" for "Chicago" and "electrical equipment" for "truck mixers" we would find ourselves talking about the instant case instead of about the Hod Carriers of Chicago.

In sustaining the demurrer and dismissing the indictment, the District Court wrote (p. 195):

> "(The Government contends) the use of truck mixers would result in a savings of labor costs through reduction of the number of men employed. Defendants insist that this is exactly what they are objecting to, and the purpose of the strikes, or threatened strikes, was to compel cement contractors in the Chicago area to accede to the union demands that the services of these engineers be retained on jobs where truck mixers are used; that these are activities within the legitimate objects of a labor union. * * * There appears to be nothing unreasonable in these demands, and only lawful means seem to have been used to accomplish them. I am of the opinion that defendants under such circumstances are immune from prosecution under the Sherman Act by reason of the provisions of the Norris-LaGuardia Act, which enlarges the scope of Section 20 of the Clayton Act."

To like effect:

U. S. v. *Local 807 etc.*, 118 Fed. (2d) 684, aff'd 315 U. S. 521.

See also:

New Negro Alliance v. *Sanitary Grocery*, 303 U. S. 552 (1938).

D. The defendants were not business associates of their employers. The agreements between them were collective bargaining agreements, obtained by strikes and other legitimate economic measures.

The plaintiffs have sought to evade the bar of the Norris-LaGuardia Act by stigmatizing the Union as one of a group of co-conspirators, the other parties to such conspiracy being the employers of its members. The Special Master, and in some measure, the District Court, adopted plaintiffs' view. The contention, however, is specious. It is based upon an extreme and distorted interpretation of some language found in the opinion of Mr. Justice Frankfurter in *United States* v. *Hutcheson*, 312 U. S. 219. The single issue in that case was said by the Justice in his opinion (p. 227) to be the following:

> "Whether the use of conventional, peaceful activities by a union in controversy with a rival union over certain jobs is a violation of the Sherman Law * * * is the question. It is sharply presented in this case because it arises in a criminal prosecution."

No charge of combination between the employer and either of the conflicting employee-groups was involved. The opinion (p. 232), however, contained the following language, which has been used by the plaintiffs herein to peg their argument charging an illicit combination:

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Section 20 [of the Clayton Act]

> are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

The word "groups" in this sentence carries the following footnote in the opinion:

> "Cf. U. S. v. Brims, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters."

Plaintiffs deduce from this language and footnote an intent on the part of the Supreme Court to draw a sharp line of demarcation through the field of labor union activities. On one side of the line plaintiffs would place such activities as are not in combination with employer-groups. These they concede to be legal. On the other side of the line they would place those activities which are in combination with employer-groups. These, conversely, they contend are illegal. Merely to state the proposition is to disclose the fallacy.

It is true that if there is *no* combination between the Union and the employer-group, there can be no illegality, for a labor union itself, even though acting in restraint of trade, possesses statutory immunity.

The converse, however, is not *necessarily* true, and its truth cannot be determined until we have first decided what we mean by the word "combination". If we mean merely an "agreement", then the simple fact of there being an agreement between the two groups does not automatically taint such relationship with illegality. An agreement made by a union with an employer-group or, as the Circuit Court of Appeals terms it, an "armistice" between the two, is the goal toward which the Union strives when it exerts its economic pressure upon the employer. How else can a union achieve a truce in its controversy than in an agreement to which the contesting parties subscribe?

If, on the other hand, by "combination" between the employer and the Union is meant the making of an agreement

for the accomplishment of ends not recognized as legitimate union objectives; or an agreement in which the self-interest of the Union is subordinated to the private gain of the employer, in short, an agreement which seeks to cast over the employer the cloak of immunity, with which the Union alone is invested, and then only when pursuing its legitimate aims, then the "combination" is properly characterized as an "illicit combination".

The Circuit Court of Appeals, reasoning along similar lines, employed the following language (Op. p. 323):

> "• • •, it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose."

Continuing with this thought, the Circuit Court of Appeals, at page 324, contributes the following footnote:

> "See also *United States* v. *Bay Area Painters & Dec. Joint Com.*, D. C., N. D. Cal., 49 F. Supp. 733, 738, saying 'it would seem beyond belief' that Congress, having carefully protected the machinery of collective bargaining would then after the bargain has been made withdraw that protection and leave the parties liable for prosecution for criminal conspiracy, • • •."

The defendants are not the partners or business associates of the employer-groups. They are, rather, the dynamic force which has driven the employer-group to enter into agreements of limited duration satisfactory to the labor group. That these agreements at the same time leave room for the employers to survive does not affect the arrangement with illegality. Each of the groups—the employer and the employee—benefited from the collective bargaining agreements, for the very word "bargaining" implies a matter of "give and take". The benefits of each are independent benefits, and neither group directly shares in

the benefits accruing to the other. The strongest circumstance indicative that the Union's position is completely independent of any "combination" with its employers and that the plaintiffs cannot find a remedy for their hurts, except by prohibiting the Union from engaging in what are legitimate Union activities, is the fact that the Union need only stand its ground to retain all the benefits of its "work opportunity" campaign. The Union need only persist in its refusal to permit its members to install any electrical equipment not fabricated by others of its membership to achieve its ends. The Circuit Court of Appeals demonstrated this weakness of plaintiffs' position in the following language (Op. p. 321):

> "It seems clear, therefore, that the union members may refuse to work upon the plaintiffs' products; and, in view of the position of economic power which the union has now attained, that privilege is for practical purposes an almost complete shield for the defendants' acts which are most injurious to the plaintiffs. For all the other acts charged against the defendants may be barred; and yet if the union can hold its ranks together and keep its members from working upon plaintiffs' products, the Metropolitan Area will still be closed to them."

If the Union has a right to instruct its members not to work, except upon compliance by the employers with the demands above recited, then the fact that the local manufacturers and contractors have yielded to such demands, does not constitute their surrender an "illicit combination" with the Union.

In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, dec. 1940, plaintiffs, asking an injunction against the defendant labor union as an alleged combination in restraint of trade, adversely affecting plaintiffs' business, sought, as in the instant case, to tar the union with a charge that its activities were in the interest of and by *arrangement* with the employers of its members to enable the latter to secure a monopoly of the sale of milk in the City of Chicago.

The plaintiffs were an association of dairy workers referred to as "vendors", two Chicago dairies and a Wisconsin cooperative association which supplied milk to these dairies. The milk so supplied was in turn delivered by the "vendors" from the dairies to stores where it was sold at retail.

The membership of the defendant union consisted of drivers who were employed by wholesalers to make delivery of milk to the consuming public from door to door.

It was evident that any increase in the retail business of the plaintiffs occasioned a concomitant decrease in the door to door deliveries by the defendant drivers of the milk sold by their employers, with resultant reduction in employment. The defendant union, after trying other expedients unsuccessfully, began to picket the retail stores for the express purpose of reducing or eliminating milk deliveries by vendors from the dairies to the retail stores. To the extent that its campaign would be effective the employers of the defendant's members would obtain more business and better prices. The plaintiffs in fact so charged.

The Court, however, brushed aside the contention of the plaintiffs

> "* * * that the controversy is not a labor dispute within the meaning of the Norris-LaGuardia Act but is an unlawful secondary boycott of which the purpose is not to unionize the vendors but to obtain for the defendant employers a Chicago milk monopoly at a sustained high price level contrary to the Sherman Act" (p. 96).

Undoubtedly the employers of the defendant did benefit to the extent that business was thus diverted from the competing retail stores, but this did not convert a bargaining agreement between the defendant union and its employers who thus benefited into a conspiracy in restraint of trade within the meaning of the Sherman Act.

The Court said further (p. 102):

> "Whether or not one agrees with the Committee's opinion that the cited cases constitute an unduly restricted interpretation of the Clayton Act, one must agree that the committee and the Congress made abundantly clear their intention that what they regarded as the misinterpretation of the Clayton Act should not be repeated in the construction of the Norris-LaGuardia Act. For us to hold, in the face of this legislation, that the Federal Courts have jurisdiction to grant injunctions in cases growing out of labor disputes merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the act and would reverse the declared purpose of Congress."

E. Labor disputes as defined by the Norris-LaGuardia Act.

The phrase "labor dispute" is defined in Section 113 of Title 29, U. S. C. A. Congress, in its efforts to afford the maximum benefit to labor and to insure that the Act should not be turned in upon labor itself, as, in its opinion, the prior Clayton Act had been, went to great lengths to make the scope of the provisions as wide and indefinite as possible. Under subdivision (a) of Section 113, it is declared that a case is to be held to involve or grow out of a labor dispute when the persons involved merely have direct or *indirect* interests in the same industry, trade, craft or occupation. Further on, in the same subdivision, after specific relationships have been designated, Congress includes an all-embracing "or when the case involves any conflicting or competing interests in a 'labor dispute' as defined in this section of persons participating or interested therein" (as defined in this section).

In subdivision (b)—and again we mention only the most general language used—a person is held to be participating or interested in a labor dispute if relief is sought *against* him, or if he has a direct or *indirect* interest in the industry, trade, craft or occupation in which a dispute arises.

Subdivision (c), which defines the phrase "labor dispute", is equally broad and all embracing, including therein any controversy concerning terms and conditions of employment or a seeking to arrange terms and conditions of employment, *regardless of whether the disputants stand in the proximate relation of employer and employee.*

Thus it is not the interest of the *plaintiffs* nor of their *employees* that qualifies this controversy as a labor dispute. It is, rather, the advantage sought by the defendant Union for *itself* which makes lawful as incidental to a labor dispute the exercise of its economic pressure upon the local manufacturers and local contractors to the end that more jobs may be created for the members of the defendant Union and an agreement terminating the controversy obtained.

Following are several cases recently decided by this Court in which it was held that the fact that a union in making agreements for the benefit of its own members did not concern itself about benefiting the competitors of the employers of its members and did not or could not enter into similar agreements with such competitors in nowise affected the legality of such agreements.

In *United States* v. *American Federation of Musicians, supra,* the ultimate goal of the union was to enter into agreements with the broadcasting studios, which would have the effect of putting the manufacturers of "canned" music out of business and depriving their employees of employment.

In *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, the plaintiff Alliance sought the discharge of white employees and their replacement by negroes. Inasmuch as the white employees could not qualify for employment if the Alliance prevailed, they, as third parties to the controversy, were destined to suffer without redress.

In *Milk Wagon Drivers' Union, Local No. 753 et al.* v. *Lake Valley Farm Products, Inc., et al., supra,* drivers, members of the defendant union, wanted for themselves the maximum amount of employment in delivering milk

from door to door to householders. Their activities, if successful, would have put the retail stores which made over the counter sales to these householders out of business so far as such sales were concerned.

In each instance, as in the present case, the success of the union in achieving its economic purpose in the struggle with the immediate employers of its members, brought or threatened to bring economic misfortune to employers or employees who were, in effect, third parties to the controversy and who could in nowise share in the benefits, if any, accruing to the parties to such controversy from any agreement ultimately entered into between them.

F. Both the District Court and the Special Master held that no labor dispute existed, although they disagreed as to the legal basis for such determination. Both, however, were in error.

The position of the Special Master as given in his opinion that no labor dispute existed has already been considered *supra*, pages 23-25. The defendants, so the Special Master found, were not trying to do anything for the benefit of plaintiffs' employees. They were interested only in themselves.

The District Judge in his memorandum opinion, although arriving at the same conclusion, acknowledged that he had done so by following a different path. Having stated its divergent view, the Court continued as follows (p. 156):

> "At any rate, if we accept the findings of fact, I believe it clear that the offense was not affected or instigated or promoted by a controversy which sprang from or involved the employer-employee relationship. I believe it clear also that, if so, it follows that the violation did not grow out of nor was it contributed to by a labor dispute within the meaning, nor would the awarding of an injunction infringe the public policy, of the Norris-LaGuardia Act. In that situation, the proposition that there was no such labor dispute seems to me *squarely sustained* by Columbia River Packers Association v. Hinton, 315 U. S. 143."

The single case, which the Court advanced as basis for its ruling was, however, in the writer's respectful opinion, misread. The *Columbia River* case was decided in 1942, with opinion by Mr. Justice Black. The opinion is brief and lucid. Of one thing we may be sure and that is that Justice Black did not imply that an ordinary workman is an independent contractor and an entrepreneur. What he did say was that a fisherman who owned a boat and occasionally employed workers and who sold his fish to processors was not an ordinary workman, but *was* such independent contractor and entrepreneur and, furthermore, if such fishermen formed an association, they did not form thereby a labor union but, rather, an association of business men. By no stretch of the imagination could this opinion be strained to hold that journeymen electricians, selling only their services, are independent contractors and entrepreneurs, and that their union is not a union at all but an association of business people.

In holding that *some* employer-employee relationship must exist before the protection of the Norris-LaGuardia Act can be claimed and in declaring that it was inapplicable to the parties involved in the *Columbia River* case, the Court in that case, at page 147, wrote as follows:

> "The controversy here is altogether between fish sellers and fish buyers. The sellers are not employees of the petitioners *or of any other employer* nor do they seek to be. On the contrary, their desire is to continue to operate as independent business men, free from such controls as an employer might exercise. That some of the fishermen have a small number of employees of their own, who are also members of the union, does not alter the situation. For the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours or other terms and conditions of employment of these employees." (Emphasis supplied.)

G. Congress intended the Norris-LaGuardia Act to be an anti-injunction law, and labor unions should, therefore, not lightly be barred from their organizational activity as allegedly violative of the Sherman Act.

The main lines of conduct of defendants charged as illegal by plaintiffs are the following:

(1) By picketing and strikes defendants compelled the contractors in the Metropolitan Area to hire only members of the Local;

(2) By picketing and strikes they compelled manufacturers in the Metropolitan Area to hire only members of the Local;

(3) By picketing and strikes they compelled the contractors to buy only from the Union manufacturers to the exclusion of the products of other manufacturers who did not hire their employees from among the membership of the defendant Local;

(4) Agreements covering the foregoing closed shop arrangements were entered into by the Union on the one hand and by contractors, singly or in groups, and by manufacturers, on the other;

(5) Such manufacturers did not object to the arrangement because through it they were enabled to sell more electrical equipment than theretofore;

(6) Nor did the contractors object to the arrangement because they made a profit on the equipment so bought.

Under the Norris-LaGuardia Act and under the cases we have cited herein, none of the foregoing acts, singly or in the aggregate, are illegal and none may be enjoined.

Section 104 of that Act contains nine categories of acts, which are not subject to restraining orders or injunctions. "*No Court of the United States shall have jurisdiction*" to restrain persons so protected from

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;"

(Does that not include the right to refuse to install the plaintiffs' unlabeled products because they were not manufactured by members of the defendant Local?)

"(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence;"

(Does this not imply that the defendant Union may picket jobs—yes, even those of the City of New York, which plaintiffs feel are sacrosanct—so that the public may be informed that no members of defendant Union's work in the factories where the electrical equipment being installed on such a job was manufactured?)

"(g) Advising or notifying any person of an intention to do any of the acts hereinbefore specified."

(Do not these few clear words instruct the defendant Union that its officers have full legal sanction to go to owners of buildings, to architects who file plans for their construction, to contractors who are to work upon them, and to builders who are to erect them and, in the case of the municipality, to its officials in charge of construction work, to all and sundry who employ electricians, and notify them that no member of the defendant Local will "perform any work" or "remain in any relation of employment" with such owner or other person, unless members of Local No. 3, and none others, are employed in the electrical work thereon and unless equipment produced in factories employing members of Local No. 3 and none other, is delivered to the journeymen electricians for installation at such job site?)

Section 104 is broad and liberal, but Congress intended an even broader and more liberal protection for labor. Congress was determined to cancel the *Duplex Printing Press* and *Bedford Cut Stone* cases as precedents so that labor would not again be confronted with a charge that its legitimate activities constituted combinations and con-

spiracies in restraint of trade, and so it enacted Section 105.

> "No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this Title."

Sections 104 and 105 have, thus, delimited the field within which the courts may, under no circumstances, enjoin an act done in the course of a labor dispute. Beyond the bounds of this prohibited area, injunctive relief may be granted under the Act, even though a labor dispute is involved.

Section 107(a) permits the courts to issue injunctions after findings of fact inter alia, to the effect: "(a) that *unlawful* acts have been threatened and will be committed unless restrained."

Congress has not defined what may constitute such "unlawful acts" which are thus enjoinable under Section 107 but, presumably, acts of fraud and violence fall within that classification.

But not even unbridled violence on the part of the Union and its members, the seizure of the employer's property, and the prevention of shipments of the employer's products during such time in interstate commerce, all done by a labor union to compel the employer to accept unionization of its plants, constitute the perpetrators a combination in restraint of trade. "Restraints, not within the Act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence." *Apex Hosiery Co.* v. *Leader, et al.*, 310 U. S. 469.

CONCLUSION

The legitimate objectives of the defendant Union concerning which the plaintiffs complain, namely, a closed shop, manned by members of the defendant Union and protected by Union labeling as to both fabrication and installation of electrical equipment, should not be thwarted or impeded by stigmatizing as the product of an illicit combination the very agreement which constitutes the embodiment of the collective bargaining between the contesting groups; nor should the plaintiffs, by indirection, in the form of a sweeping declaration of illegality or, directly, by writ of injunction, be permitted to circumvent the explicit immunities conferred by the Norris-LaGuardia Act upon persons qualifying thereunder as involved in a labor dispute, namely, that "No Court of the United States shall have jurisdiction" to restrain persons so protected from "Ceasing or refusing to perform any work or to remain in any relation of employment," etc. (Section 104).

The decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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HAROLD STERN,
GEORGE ROSLING,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

702.—October Term, 1944.

Allen Bradley Company, et al., Petitioners, *vs.* Local Union No. 3, International Brotherhood of Electrical Workers, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[June 18, 1945.]

Mr. Justice Black delivered the opinion of the Court.

The question presented is whether it is a violation of the Sherman Anti-trust Act[1] for labor unions and their members, prompted by a desire to get and hold jobs for themselves at good wages and under high working standards, to combine with employers and with manufacturers of goods to restrain competition in, and to monopolize the marketing of, such goods.

Upon the complaint of petitioners and after a lengthy hearing the District Court held that such a combination did violate the Sherman Act, entered a declaratory judgment to that effect, and entered an injunction restraining respondents from engaging in a wide range of specified activities. 41 F. Supp. 727, 51 F. Supp. 36. The Circuit Court of Appeals reversed the decision and dismissed the cause, holding that combinations of unions and business men which restrained trade and tended to monopoly were not in violation of the Act where the bona fide purpose of the unions was to raise wages, provide better working conditions, and bring about better conditions of employment for their members. 145 F. 2d 215. The Ninth Circuit Court of Appeals having reached a contrary conclusion in a similar case, 145 F. 2d 546, we granted certiorari in both cases.

The facts were sufficiently set out in the opinions below and need not be detailed again. The following summary will suffice for our purposes.

Petitioners are manufacturers of electrical equipment. Their places of manufacture are outside of New York City, and most of them are outside of New York State as well. They have

[1] 26 Stat. 209; 50 Stat. 693.

brought this action because of their desire to sell their products in New York City, a market area that has been closed to them through the activities of respondents and others.

Respondents are a labor union, its officals and its members. The union, Local No. 3 of the International Brotherhood of Electrical Workers, has jurisdiction only over the metropolitan area of New York City. It is therefore impossible for the union to enter into a collective bargaining agreement with petitioners. Some of petitioners do have collective bargaining agreements with other unions, and in some cases even with other locals of the I. B. E. W.

Some of the members of respondent union work for manufacturers who produce electrical equipment similar to that made by petitioners; other members of respondent union are employed by contractors and work on the installation of electrical equipment, rather than in its production.

The union's consistent aim for many years has been to expand its membership, to obtain shorter hours and increased wages, and to enlarge employment opportunities for its members. To achieve this latter goal—that is, to make more work for its own members—the union realized that local manufacturers, employers of the local members, must have the widest possible outlets for their product. The union therefore waged aggressive campaigns to obtain closed shop agreements with all local electrical equipment manufacturers and contractors. Using conventional labor union methods, such as strikes and boycotts, it gradually obtained more and more closed shop agreements in the New York City area. Under these agreements, contractors were obligated to purchase equipment from none but local manufacturers who also had closed shop agreements with Local No 3; manufacturers obligated themselves to confine their New York City sales to contractors employing the Local's members. In the course of time, this type of individual employer-employee agreement expanded into industry-wide understandings, looking not merely to terms and conditions of employment but also to price and market control. Agencies were set up composed of representatives of all three groups to boycott recalcitrant local contractors and manufacturers and to bar from the area equipment manufactured outside its boundaries. The combination among the three groups, union, contractors, and manufacturers, became highly successful from the standpoint of all of

them. The business of New York City manufacturers had a phenomenal growth thereby multiplying the jobs available for the Local's members. Wages went up, hours were shortened, and the New York electrical equipment prices soared, to the decided financial profit of local contractors and manufacturers. The success is illustrated by the fact that some New York manufacturers sold their goods in the protected city market at one price and sold identical goods outside of New York at a far lower price. All of this took place, as the Circuit Court of Appeals declared, "through the stifling of competition", and because the three groups, in combination as "co-partners", achieved "a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs." Interstate sale of various types of electrical equipment has, by this powerful combination, been wholly suppressed.

Quite obviously, this combination of business men has violated both Sections (1) and (2) of the Sherman Act,[2] unless its conduct is immunized by the participation of the union. For it intended to and did restrain trade in and monopolize the supply of electrical equipment in the New York City area to the exclusion of equipment manufactured in and shipped from other states, and did also control its price and discriminate between its would-be customers. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 512-513. Our problem in this case is therefore a very narrow one—do labor unions violate the Sherman Act when, in order to further their own interests as wage earners, they aid and abet business men to do the precise things which that Act prohibits?

The Sherman Act as originally passed contained no language expressly exempting any labor union activities. Sharp controversy soon arose as to whether the Act applied to unions. One viewpoint was that the only evil at which Congress had aimed was high consumer prices achieved through combinations looking to control of markets by powerful groups; that those who would have a great incentive for such combinations would be the business men who would be the direct beneficiaries of them; therefore, the

[2] Sections 1 and 2 provide in part as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . .

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, . . ."

argument proceeded, Congress drafted its law to apply only to business combinations, particularly the large trusts, and not to labor unions or any of their activities as such. Involved in this viewpoint were the following contentions: that the Sherman Act is a law to regulate trade, not labor, a law to prescribe the rules governing barter and sale, and not the personal relations of employers and employees; that good wages and working conditions helped and did not hinder trade, even though increased labor costs might be reflected in the cost of products; that labor was not a commodity; that laborers had an inherent right to accept or terminate employment at their own will, either separately or in concert; that to enforce their claims for better wages and working conditions, they had a right to refuse to buy goods from their employer or anybody else; that what they could do to aid their cause, they had a right to persuade others to do; and that the Anti-trust laws designed to regulate trading were unsuitable to regulate employer-employee relations and controversies. The claim was that the history of the legislation supported this line of argument.[3]

The contrary viewpoint was that the Act covered all classes of people and all types of combinations, including unions, if their activities even physically interrupted the free flow of trade or tended to create business monopolies, and that a combination of laborers to obtain a raise in wages was itself a prohibited monopoly. Federal courts adopted the latter view and soon applied the law to unions in a number of cases.[4] Injunctions were used to enforce the Act against unions. At the same time employers invoked injunctions to restrain labor union activities even where no violation of the Sherman Act was charged.

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[3] For a comprehensive discussion of the history of the Sherman Act, see 51 Cong. Rec. 13661-13668, 63rd Cong., 2nd Sess. And see *Ibid.*, 13969-13971, 14013-14016, 14020-14023. See also Berman, Labor and The Sherman Act (1930), pp. 1-98; Mason, Organized Labor and The Law, Chapters 7 & 8; Gompers, "The Sherman Law. Amend It Or End It", American Federationist, Vol. 17, No. 3, March, 1910, pp. 197, 202. For prior discussions in this Court of the dominant concern of Congress to protect consumers from business combinations, see United States *v.* Trans-Missouri Freight Assn., 166 U. S. 290; Standard Oil Co. *v.* United States, 221 U. S. 1; Apex Hosiery Co. *v.* Leader, 310 U. S. 469; United States *v.* Underwriters' Assn., 322 U. S. 533.

[4] See note 3, *supra*. See also 51 Cong. Rec. 9068-9077; 9081-9091; United States *v.* Amalgamated Counsel, 54 F. 994 (1893); Waterhouse et al. *v.* Comer, 55 F. 149 (1893); United States *v.* Debs et al., 64 F. 724 (1894); Loewe *v.* Lawler, 208 U. S. 274, 235 U. S. 522. And see Appendix to Berman, *op. cit.*, *supra*.

Vigorous protests arose from employee groups. The unions urged congressional relief from what they considered to be two separate, but partially overlapping evils—application of the Sherman Act to unions, and issuance of injunctions against strikes, boycotts and other labor union weapons. Numerous bills to curb injunctions were offered. Other proposed legislation was intended to take labor unions wholly outside any possible application of the Sherman Act. All of this is a part of the well known history of the era between 1890 and 1914.[5]

To amend, supplement and strengthen the Sherman Act against monopolistic business practices and in response to the complaints of the unions against injunctions and application of the Act to them, Congress in 1914 passed the Clayton Act.[6] Elimination of those "trade practices" which injuriously affected competition was its first objective.[7] Each section of the measure prohibiting such trade practices contained language peculiarly appropriate to commercial transactions as distinguished from labor union activities, but there is no record indication in anything that was said or done in its passage which indicates that those engaged in business could escape its or the Sherman Act's prohibitions by obtaining the help of labor unions or others. That this bill was intended to make it all the more certain that competition should be the rule in all commercial transactions is clear from its language and history.

In its treatment of labor unions and their activities the Clayton Act pointed in an opposite direction. Congress in that Act responded to the prolonged complaints[8] concerning application of the Sherman law to labor groups by adopting Section 6,[9] for this purpose, and also drastically to restrict the general power

[5] See authorities cited in footnotes 3 and 4, *supra*. And see Frankfurter and Greene, The Labor Injunction (1930); Berman, *op. cit. supra*, pp. 99-117.

[6] 38 Stat. 730.

[7] Senate Report No. 698, 63rd Cong., 2nd Sess.

[8] *Ibid.*, 10-12.

[9] Section 6 reads as follows: "That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

of federal courts to issue labor injunctions, Section 20[10] was adopted. Section 6 declared that labor was neither a commodity nor an article of commerce, and that the Sherman Act should not be "construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help . . . ." Section 20 limited the power of courts to issue injunctions in a case "involving or growing out of a labor dispute over terms or conditions of employment . . . ." It declared that no restraining order or injunction should prohibit certain specified acts, and further declared that no one of these specified acts should be "held to be violations of any law of the United States" This Act was broadly proclaimed by many as labor's "Magna Carta", wholly exempting labor from any possible inclusion in the Anti-trust legislation; others, however, strongly denied this.

This Court later declined to interpret the Clayton Act as manifesting a congressional purpose wholly to exempt labor unions from the Sherman Act. *Duplex Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Assn.*, 274 U. S. 37. In those cases labor unions had engaged in a secondary boycott; they had boycotted dealers, by whom the union members were not employed, because those dealers insisted on selling goods produced by the employers with whom the unions had an existing controversy over terms and conditions of employment. This Court held that the Clayton Act exempted labor union activities only insofar as those activities were directed against the employees' immediate employers and that controversies over the sale of goods by other dealers did not constitute "labor disputes" within the meaning of the Clayton Act.

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[10] Section 20 reads in part as follows: "And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

Again the unions went to Congress. They protested against this Court's interpretation, repeating the arguments they had made against application of the Sherman Act to them. Congress adopted their viewpoint, at least in large part, and in order to escape the effect of the *Duplex* and *Bedford* decisions,[11] passed the Norris-La Guardia Act, 47 Stat. 71. That Act greatly broadened the meaning this Court had attributed to the words "labor dispute", further restricted the use of injunctions in such a dispute, and emphasized the public importance under modern economic conditions of protecting the rights of employees to organize into unions and to engage in "concerted activities for the purpose of collective bargaining or other mutual aid and protection." This congressional purpose found further expression in the Wagner Act, 49 Stat. 449.

We said in *Apex Hosiery Co.* v. *Leader, supra,* 448, that labor unions are still subject to the Sherman Act to "some extent not defined". The opinion in that case, however, went on to explain that the Sherman Act "was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern"; that its purpose was to protect consumers from monopoly prices, and not to serve as a comprehensive code to regulate and police all kinds and types of interruptions and obstructions to the flow of trade. This was a recognition of the fact that Congress had accepted the arguments made continuously since 1890 by groups opposing application of the Sherman Act to unions. It was an interpretation commanded by a fair consideration of the full history of Anti-trust and labor legislation.

United States v. *Hutcheson,* 312 U. S. 219, declared that the Sherman, Clayton and Norris-La Guardia Act must be jointly considered in arriving at a conclusion as to whether labor union activities run counter to the Anti-trust legislation. Conduct which they permit is not to be declared a violation of federal law. That decision held that the doctrine of the *Duplex* and *Bedford* cases was inconsistent with the congressional policy set out in the three "interlacing statutes."

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[11] Milk Wagon Drivers' Union, Local No. 753 *v.* Lake Valley Farm Products, Inc., 311 U. S. 91; New Negro Alliance *v.* Sanitary Grocery Co., 303 U. S. 552.

The result of all this is that we have two declared congressional policies which it is our responsibility to try to reconcile. The one seeks to preserve a competitive business economy; the other to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the other.

Aside from the fact that the labor union here acted in combination with the contractors and manufacturers, the means it adopted to contribute to the combination's purpose fall squarely within the "specified acts" declared by Section 20 not to be violations of federal law.[12] For the union's contribution to the trade boycott was accomplished through threats that unless their employers bought their goods from local manufacturers the union laborers would terminate the "relation of employment" with them and cease to perform "work or labor" for them; and through their "recommending, advising, or persuading others by peaceful and lawful means" not to "patronize" sellers of the boycotted electrical equipment. Consequently, under our holdings in the *Hutcheson* case and other cases which followed it,[13] had there been no union-contractor-manufacturer combination the union's actions here, coming as they did within the exemptions of the Clayton and Norris-La Guardia Acts, would not have been violations of the Sherman Act. We pass to the question of whether unions can with impunity aid and abet business men who are violating the Act.

On two occasions this Court has held that the Sherman Act was violated by a combination of labor unions and business men to restrain trade.[14] In neither of them was the Court's attention

[12] It has been argued that no labor disputes existed. The argument is untenable. We do not have here, as we did in Columbia River Packers' Association *v.* Hinton, 315 U. S. 143, a dispute between groups of business men revolving solely around the price at which one group would sell commodities to another group. On the contrary, Local No. 3 is a labor union and its spur to action related to wages and working conditions.

[13] United States *v.* Building and Construction Trades Council, 313 U. S. 539; United States *v.* United Brotherhood of Carpenters and Joiners of America, 313 U. S. 539; United States *v.* International Hod Carriers and Common Laborers' District Council, 313 U. S. 539; United States *v.* American Federation of Musicians, 318 U. S. 741.

[14] United States *v.* Brims, 272 U. S. 549; Local 167 *v.* United States, 291 U. S. 293.

sharply called to the crucial questions here presented. Furthermore, both were decided before the passage of the Norris-La Guardia Act, and prior to our holding in the *Hutcheson* case. It is correctly argued by respondents that these factors greatly detract from the weight which the two cases might otherwise have in the instant case. See *United States* v. *Hutcheson, supra*, 236. Without regard to these cases, however, we think Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.

Section 6 of the Clayton Act declares that the Sherman Act must not be so construed as to forbid the "existence and operation of labor, agricultural, or horticultural organizations instituted for the purpose of mutual help . . . ." But "the purpose of mutual help" can hardly be thought to cover activities for the purpose of "employer-help" in controlling markets and prices. And in an analogous situation where an agricultural association joined with other groups to control the agricultural market, we said:

> "The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination of conspiracy *with other persons* in restraint of trade that these producers may see fit to devise." *United States* v. *Borden Co.*, 308 U. S. 188, 204-205. (Italics supplied.)

We have been pointed to no language in any act of Congress or in its reports or debates, nor have we found any, which indicates that it was ever suggested, considered, or legislatively determined that labor unions should be granted an immunity such as is sought in the present case. It has been argued that this immunity can be inferred from a union's right to make bargaining agreements with its employer. Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one

element in a far larger program in which contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business men from that area, and to charge the public prices above a competitive level. It is true that victory of the union in its disputes, even had the union acted alone, might have added to the cost of goods, or might have resulted in individual refusals of all of their employers to buy electrical equipment not made by Local No. 3. So far as the union might have achieved this result acting alone, it would have been the natural consequence of labor union activities exempted by the Clayton Act from the coverage of the Sherman Act. *Apex Hosiery Co.* v. *Leader, supra,* 503. But when the unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-La Guardia Acts.

It must be remembered that the exemptions granted the unions were special exceptions to a general legislative plan. The primary objective of all the Anti-trust legislation has been to preserve business competition and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective. For if business groups, by combining with labor unions, can fix prices and divide up markets, it was little more than a futile gesture for Congress to prohibit price fixing by business groups themselves. Seldom, if ever, has it been claimed before, that by permitting labor unions to carry on their own activities, Congress intended completely to abdicate its constitutional power to regulate interstate commerce and to empower interested business groups to shift our society from a competitive to a monopolistic economy. Finding no purpose of Congress to immunize labor unions who add and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act.

Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. This, it is argued, brings about a wholly undesirable re-

sult—one which leaves labor unions free to engage in conduct which restrains trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress. *Apex Hosiery Co.* v. *Leader, supra.* It is true that many labor union activities do substantially interrupt the course of trade and that these activities, lifted out of the prohibitions of the Sherman Act, include substantially all, if not all, of the normal peaceful activities of labor unions. It is also true that the Sherman Act "draws no distinction between the restraints effected by violence and those achieved by peaceful means . . . ", *Apex Hosiery Co.* v. *Leader, supra,* 513, and that a union's exemption from the Sherman Act is not to be determined by a judicial "judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." *United States* v. *Hutcheson, supra,* 232. Thus, these congressionally permitted union activities may restrain trade in and of themselves. There is no denying the fact that many of them do so, both directly and indirectly. Congress evidently concluded, however, that the chief objective of Anti-trust legislation, preservation of business competition, could be accomplished by applying the legislation primarily only to those business groups which are directly interested in destroying competition. The difficulty of drawing legislation primarily aimed at trusts and monopolies so that it could also be applied to labor organizations without impairing the collective bargaining and related rights of those organizations has been emphasized both by congressional and judicial attempts to draw lines between permissible and prohibited union activities. There is, however, one line which we can draw with assurance that we follow the congressional purpose. We know that Congress feared the concentrated power of business organizations to dominate markets and prices. It intended to outlaw business monopolies. A business monopoly is no less such because a union participates, and such participation is a violation of the Act.

This brings us to a consideration of the scope of the declaratory judgment and the injunction granted by the district court. We cannot sustain the judgment or the injunction in the form in which they were entered. The judgment and the injunction apply only to the union, its members, and its agents, since they were the only parties against whom relief was asked. The judgment de-

clared that "the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the . . . . Sherman Anti-Trust Law, as amended and supplemented." There were 374 findings of fact which cover 111 pages of the printed record. These findings were made from 25000 pages of evidence. The declaratory judgment, which was the foundation for the injunction, is thus almost the equivalent of a statement that each fact "as set forth in the 374 findings" constituted a violation of the Sherman Act. And when we turn to the sweeping commands of the injunction, we find that its terms, directed against the union and its agents alone, restrained the union, even though not acting in concert with the manufacturers, from doing the very things that the Clayton Act specifically permits unions to do. We agree with the following statement of the Circuit Court of Appeals:

> "Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, Section 20, viz., as restraining Local 3 and its officers 'from terminating any relation of employment, or from ceasing to perform any work or labor . . . or from ceasing to patronize . . . any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do.' 29 U. S. C. A., Section 52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendant set forth in the findings."

Respondents objected to the form of the injunction and specifically requested that it be amended so as to enjoin only those prohibited activities in which the union engaged in combination "with any person, firm or corporation which is a non-labor group . . . ." Without such a limitation, the injunction as issued runs directly counter to the Clayton and the Norris-La Guardia Acts. The district court's refusal so to limit it was error.

The judgment of the Circuit Court of Appeals ordering the action dismissed is accordingly reversed and the cause is remanded to the district court for modification and clarification of the judgment and injunction, consistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES.

No. 702.—October Term, 1944.

Allen Bradley Company, et al., Petitioners, vs. Local Union No. 3, International Brotherhood of Electrical Workers, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[June 18, 1945.]

Mr. Justice Murphy, dissenting.

My disagreement with the Court rests not so much with the legal principles announced as with the application of those principles to the facts of the case.

If the union in this instance had acted alone in its self-interest, resulting in a restraint of interstate trade, the Sherman Act concededly would be inapplicable. But if the union had aided and abetted manufacturers or traders in violating the Act, the union's statutory immunity would disappear. I cannot agree, however, that the circumstances of this case demand the invocation of the latter rule.

The union here has not in any true sense "aided" or "abetted" a primary violation of the Act by the employers. In the words of the union, it has been "the dynamic force which has driven the employer-group to enter into agreements" whereby trade has been affected. The fact that the union has expressed its self-interest with the aid of others rather than solely by its own activities should not be decisive of statutory liability. What is legal if done alone should not become illegal if done with the assistance of others and with the same purpose in mind. Otherwise a premium of unlawfulness is placed on collective bargaining.

Had the employers embarked upon a course of unreasonable trade restraints and had they sought to immunize themselves from the Sherman Act by using the union as a shield for their nefarious practices, we would have quite a different case. The union then could not be said to be acting in its self-interest in combining with the employers to carry out trade restraints primarily for the employers' interests, even though incidental benefits might accrue to the union. Under such conditions the union fairly could be said to be aiding and abetting a violation of the Act and its immunity would be lost. The facts of this case, however, do not allow such conclusions to be drawn.

I would therefore affirm the judgment of the court below.

SUPREME COURT OF THE UNITED STATES.

No. 702.—October Term, 1944.

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[June 18, 1945.]

Mr. Justice Roberts.

While I should reverse the judgment, I am unable to concur in the court's opinion. I think it conveys an incorrect impression of the genesis and character of the conspiracy charged in the complaint, and misapplies recent decisions of the court.

There is no doubt that the programme adopted by Local No. 3 envisaged the exclusion, from the entire New York City area, of any electrical workers, whether engaged in manufacturing or installing electrical devices and equipment, except members of the Local. The organization from time to time increased the classes of members, so as to add to its original membership of workers engaged in fabricating and installing electrical devices, equipment, and apparatus the additional categories of shop employes engaged in manufacturing electrical equipment and all workers employed in alterations, additions, and repairs involving electrical equipment. It succeeded in unionizing and imposing closed shops employing only members of Local 3, not only on all building contractors, but on all repair contractors and their establishments and all manufacturers of electrical equipment. Membership in the union was closely restricted and the campaign eventuated in a situation where no electrical work could be done by persons other than members of the union, no building construction could be done by other than union men, no matter what their trade, and no manufactured electrical appliance or apparatus could be installed in the New York area without the consent of Local No. 3. That consent was given only if the device, appliance or apparatus was manufactured, or work done on it, by members

of the Local. Complicated apparatus which had to be manufactured outside New York City, because no establishment making it existed within the city, had to be dismantled and rebuilt by members of the Local before it could be used in the New York area.

It is true that before Local No. 3 obtained this complete control of the industry in its area of operation certain associated building contractors dealt jointly as an association with the union. As respects certain manufacturers which came under the dominance of the union this is not true. Nor is it true of repair businesses. On the contrary, it is the fact that each one of these was individually coerced by the union's power to agree to its terms. It is, therefore, inaccurate to say that the employers used the union to aid and abet them to restrain interstate commerce. Some of the employers, notably the building contractors, did jointly cooperate with the union; other sorts of employers were forced individually to comply with the union's demands, until all of them had succumbed.

There can be no question of the purpose of the union. It was to exclude from use in the City of New York articles of commerce made outside the city and offered for sale to users within the city; it was completely to monopolize the manufacture and sale of all electrical equipment and devices within New York, and to exclude from use in the area every such article manufactured outside the city, whether in a closed union shop or not. The results of this programme are obvious. Interstate commerce between New York City and manufacturers having establishments outside the city was completely broken off, and the monopoly created raised, standardized and fixed the prices of merchandise and apparatus.

As I understand the opinion of the court, such a programme, and such a result, is wholly within the law provided only that employers do not jointly agree to comply with the union's demands. Unless I misread the opinion, the union is at liberty to impose every term and condition as shown by the record in this case and to enforce those conditions and procure an agreement from each employer to such conditions by calling strikes, by lockout, and boycott, provided only such employer agrees for himself alone and not in concert with any other.

I point out again, as respects certain employers here concerned, that that is the situation, whereas, with respect to the building construction employers, there was mutual agreement with the union. But the opinion takes no note of the distinction in fact. It seems to me that the law as announced by the court creates an impossible situation such as Congress never contemplated and leaves commerce paralyzed beyond escape.

Until *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, was decided I had thought that a conspiracy by laborers to interrupt the free flow of commerce was a violation of the Sherman Act. That case, however, announced a narrower doctrine. Its teaching is that only activity of labor which harms the commercial competitive system through raising prices, restricting production, or otherwise controlling the market, falls within the proscription of the Sherman Act. In that case it was said:

"Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act."

It was added that the restraint there under examination was not shown "to have any actual or intended effect on price or price competition." The decision indicated that, in some undefined circumstances, labor organizations might be subject to the statute.

In *Hutcheson* v. *United States*, 312 U. S. 219, secondary boycotts by labor unions to keep out of the market nonunion goods, or goods worked on by other unions, were held immune from liability, civil or criminal, under the Sherman Act. It was there said:

"So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

Thus, although a conspiracy between laborers is distinguished from one between them and employers, it is intimated, as I think, that a purpose on the part of a labor group to harm the commercial competitive system, to raise prices, to restrict production, or otherwise control the market, would not render the concerted action illegal, provided only that no employer participated. The reservation made in the *Apex* case was discarded in the *Hutcheson* case. This advance in the law was emphasized in *United States* v. *Building & Construction Trades Council*, 313 U. S. 539, and *United States* v. *United Brotherhood of Carpenters and Joiners*, 313 U. S. 539, but the court went even farther, in *United States* v. *American Federation of Musicians*, 318 U. S. 741, and, as I think, rendered a decision contrary to that now announced. There a motion to dismiss a bill of complaint was granted and this court sustained that action. The complaint charged a conspiracy by the American Federation of Musicians, a nationwide organization, and its officers, to obtain employment for its members by eliminating entirely from interstate commerce all phonograph records and electrical transcriptions of music and eliminating all competition between transcribed music and that produced by living musicians. The conspiracy charged was absolutely to prevent manufacture or sale of phonograph records and electrical transcriptions; to eliminate from the market all manufacturers, distributors, jobbers or retailers of the same, and to prevent the use of the articles, either in public places or private homes, and, of course, to prevent their sale. In the bill it was charged that the conspiracy did not grow out of or involve any dispute concerning terms or conditions of employment; that the purpose of the conspiracy was to eliminate from the market, manufacture, sale and use of mechanical recordings and records and transcriptions unless the persons engaged in this business should enter into agreements with the union, hiring useless and unnecessary labor, as the union would demand. The further purpose of the conspiracy charged was to exclude from the market competition by anyone who failed exclusively to employ members of the union. The complaint further charged that the purpose and effect of the conspiracy was unlawfully to destroy all manufacture and sale, in interstate commerce, of phonograph records and electrical transcriptions, eliminate all competition between music produced by mechanical means and music produced by living musicians, to deprive the public

of an inexpensive means of entertainment in public places and in the home.

This court's affirmance of the dismissal of this complaint can only mean that every business-man who desires to stay in business must if a union so demands enter into an agreement with the union eliminating certain articles from his manufacture, from his sales, or from his use. The decision must necessarily mean that it would not be unlawful to enter into such an agreement with the union, otherwise we should have the anomaly that the union's demand for such an agreement is impeccable but the employer's acquiescence is unlawful. As shown by the opinion of the District Court in that case (47 F. Supp. 304) the Government contended that the Union's effort represented "an attempt by the union to force employers to combine with it for the purpose of restraining interstate trade" . . . . The District Court shortly answered this contention (p. 309) by saying: "In the court's opinion, *United States* v. *Brims*, 272 U. S. 549, . . . and like cases, are not pertinent." This must mean that each employer, in the instant case, is at liberty to agree with the union on all the terms and conditions which create a complete monopoly, a complete boycott, a complete closing of the market, and a serious price fixing affecting competitive commercial transactions. This is what I understand the court now holds. This is what was accomplished with impunity by the Federation of Musicians. But the situation created by such a holding is unreal.

As I have pointed out, in two branches of the industry, the manufacturers and employers, one by one, succumbed to union pressure and entered into agreements. Was not such an action, in each instance, a conspiracy? Are more than two parties required to conspire, and did not each of those conspiracies, to some extent, hinder and restrain interstate commerce and affect the market and the competitive price situation? As each agreement was consummated the market was, to that extent, closed and the boycott against out-of-the-city manufactures tightened.

But more. The union did not conduct its campaign in a corner. Albeit the findings are that manufacturers and repairers of electrical appliances violently resisted the unionization of their businesses, they, one by one, surrendered and signed. In doing so many must have had knowledge of what others were doing or had

done. And, as the coverage became complete, each one was enabled to stifle out of town competition and to raise prices. In any action against them and the union charging conspiracy it would be urged that a conspiracy need not consist of a written or verbal agreement but might be inferred from similarity of action. And it would be little protection to the employers concerned that, in each instance, a separate agreement was signed between union and employer.

The course of decision in this court has now created a situation in which, by concerted action, unions may set up a wall around a municipality of millions of inhabitants against importation of any goods if the union is careful to make separate contracts with each employer, and if union and employers are able to convince the court that, while all employers have such agreements, each acted independently in making them,—this notwithstanding the avowed purpose to exclude goods not made in that city by the members of the union; notwithstanding the fact that the purpose and inevitable result is the stifling of competition in interstate trade and the creation of a monopoly.

The only answer I find in the opinion of the court is that Congress has so provided. I think it has not provided any such thing and that the figmentary difference between employers negotiating jointly with the only union with which they can deal,—which imposes like conditions on all employers—and each employer dealing separately with the same union is unrealistic and unworkable. And the language of § 20 of the Clayton Act makes no such distinction.

This court, as a result of its past decisions, is in the predicament that whatever it decides must entail disastrous results. I can understand that the Circuit Court of Appeals felt constrained by the prior decisions of this court to order the judgment of the District Court reversed and the action dismissed. If the present decision is, as I think, a retrogression from earlier holdings, I welcome it; if it is but a limitation of them I concur in the partial alleviation of an impossible situation. But I would not limit the injunction as the opinion directs.